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February 27, 2008

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

COMMENT

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Re: Exemption from Registration for Certain Firms with Regulation 30.10 Relief,
73 Fed.Reg. 4499 (January 25, 2008)

Dear Mr. Stawick:

The Futures Industry Association ("FIA")¹ welcomes the opportunity to comment on the Commodity Futures Trading Commission's ("Commission's") proposed amendment to Commission rule 3.10(c). The amendment would codify the terms and conditions of several no-action letters adopted by the Division of Clearing and Intermediary Oversight ("Division"), pursuant to which foreign affiliates of certain US FCMs have been authorized to accept orders from US institutional customers² for execution on US designated contract markets ("DCMs") notwithstanding that such affiliates are not registered with the Commission as introducing brokers.³

Consistent with the terms and conditions of the Division letters, proposed rule 3.10(c)(4) would exempt from registration as an introducing broker a foreign affiliate of a US FCM that accepts orders from US institutional customers for execution on US DCMs, provided:

- The affiliate is exempt from registration as an FCM in accordance with the provisions of Commission rule 30.10;

¹ FIA is a principal spokesman in the United States for the commodity futures and options industry. Our regular membership is comprised of approximately 40 of the largest futures commission merchants ("FCMs") in the United States. Among our approximately 150 associate members are representatives of virtually all other segments of the futures industry, both national and international, including US and international exchanges, banks, legal and accounting firms, introducing brokers, commodity trading advisors, commodity pool operators and other market participants, and information and equipment providers. Reflecting the scope and diversity of our membership, FIA estimates that our members are responsible for more than 80 percent of all customer transactions executed on US contract markets.

² An institutional customer is defined in Commission rule 1.3(g) to mean an eligible contract participant as set forth in section 1a(12) of the Commodity Exchange Act ("Act").

³ The no-action letters are listed in footnote 10 of the *Federal Register* release accompanying the proposed amendment. 73 Fed.Reg. at 4501.

- All accounts of US institutional customers are introduced on a fully-disclosed basis in accordance with Commission rule 1.57;
- The affiliated FCM files with the National Futures Association (“NFA”) an acknowledgment that it will be jointly and severally liable for any violations of the Act or the Commission’s regulations by the affiliate in connection with such activities, whether or not the affiliated FCM clears any trades resulting therefrom; and
- The affiliate does not solicit any person located in the US for trading on a DCM or handle any customer funds of any person located in the US for trading on a DCM.

FIA strongly supports the adoption of proposed rule 3.10(c)(4) and encourages the Commission to promulgate a final rule promptly.⁴ As is evident from the number of requests for no-action received in the past year—at least several of which were on behalf of FIA member FCMs and their affiliates—the proposed relief has become increasingly important to FCMs and their affiliates as their institutional customers extend their trading activities to a growing number of international markets. It is no longer necessary for FCMs and their affiliates that wish to take advantage of this relief to file separate no-action requests.⁵

In the accompanying *Federal Register* release, the Commission requested comment on “whether it would be appropriate to establish minimum capital or other standards for the affiliated FCM as a condition for the exemptive relief.” 74 *Fed.Reg.* at 4501. FIA opposes the adoption of a minimum capital requirement for affiliated FCMs. We appreciate that the financial strength and organizational structure of each FCM and affiliate was a factor in the Division’s decision to grant no-action relief. However, since the foreign affiliates will be acting only in the capacity of introducing brokers with respect to transactions on US markets and FCMs will be holding all customer funds, the relationship is no different from that of any other FCM and introducing broker relationship.

In this regard, the circumstances are significantly different from those for which relief is granted under Commission rule 30.12. Under this latter rule, institutional customers of an FCM may be

⁴ FIA also supports the Commission’s proposal to revoke rule 30.8.

⁵ In the accompanying *Federal Register* release, the Commission noted that, upon adoption of a final rule, it would rescind the no-action letters previously issued and listed in footnote 10. Except as noted below, we believe rescission would be appropriate. At the same time, however, we ask the Commission to confirm that, since they have already filed an acknowledgment of joint and several liability with the Commission, the FCMs that received the no-action letters will not be required to file a new acknowledgment with NFA.

The Commission encouraged any person that would be adversely affected by such rescission to file a comment. In this regard, we understand that Macquarie Futures USA Inc. has filed a comment letter in which it asks the Commission to not rescind CFTC Letter No. 07-16, which was issued to Macquarie Futures USA Inc. and its affiliate Macquarie Futures & Options (Hong Kong) Limited. Hong Kong, of course, is not a 30.10 jurisdiction and, if Letter No. 07-16 were rescinded, Macquarie Futures & Options will lose the relief that it had previously been granted. FIA supports the Macquarie entities in this matter and suggests that other FIA member firms and their affiliates that are not located in 30.10 jurisdictions may want to request similar relief. Therefore, the Commission may want to consider whether to address this issue in any final rule that is promulgated.

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authorized to place trades directly with a foreign broker for execution in the FCM's customer omnibus account with that broker. Thus, the FCM is assuming direct responsibility for meeting margin obligations with respect to such transactions carried by the foreign broker.

The Commission also asked whether the proposed exemption should be extended to otherwise qualified foreign persons that advise institutional customers for the purposes of trading on US markets. Presumably, such relief would be limited to affiliates of US FCMs. At this time, FIA is uncertain whether such is necessary.

Conclusion

FIA appreciates the opportunity to submit these comments in support of proposed Commission rule 3.10(c)(4). If you have any questions concerning this letter, please contact Barbara Wierzynski, FIA's General Counsel, at (202) 466-5460.

Sincerely,



John M. Damgard
President

cc: Honorable Walter Lukken, Acting Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner

Division of Clearing and Intermediary Oversight
Ananda Radhakrishnan, Director
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